



Personnel

**SEPARATION FOR DRUG ABUSE**

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**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction applies to all officers and enlisted members of the California Air National Guard, and establishes the administrative separation process for members identified through the Air National Guard urinalysis testing program as drug offenders. Failure to observe the mandatory program as drug offenders. Failure to observe the mandatory provisions in this publication is a violation of Article 92, UCMJ, and non-compliance may result in punishment under Article 92, UCMJ.

**PRIVACY ACT STATEMENT.** This instruction directs collecting and maintaining information protected by the Privacy Act of 1974 as authorized by 10 U.S.C. 275 and 8013. Systems of records FO35 APRC 1, Requests for Discharge from the Air National Guard and the Air Force Reserve.

**SUMMARY OF REVISIONS:** Updates references.

**1.1. Separation Authority.**

1.1.1. The authority to separate enlisted members from the California Air National Guard and to determine the type of discharge certificate to be issued rests with the State Adjutant General. Personnel who test positive through the Air National Guard urinalysis testing program must be processed for separation by authority of AFI 36-3209, PARA 1-16 AND PARA 3.21.3.2. Cases which involve personnel with lengthy service (18-20) years will be forwarded to the Secretary of the Air Force (SAF) for review in accordance with AFI 36-3209.

1.1.2. Officers who test positive for drugs will be processed for discharge in accordance with AFI 36-3209, para 1-16 and paragraph 2.30.3.

**2.1. Policy.** It is the policy of the California Air National Guard that members found to be drug positive through inspection testing, probable cause testing, or medical urinalysis test alone will be, as a rule, recommended for discharge Under Other than Honorable Conditions if the convening authority and the member's commander have determined that court martial charges should not be referred. Members with positive results from Commander-directed testing must be recommended for an honorable discharge. However, if there is independent adverse information, other than the urinalysis test, the member's unit commander may consider a less favorable discharge action, characterized to reflect more accurately the member's service.

**3.1. Procedures.** AFI 36-3209 will be used as a guide in the discharge process.

3.1.1. Individuals recommended for discharge will be offered an administrative discharge board when discharge is Under Other than Honorable Conditions in accordance with AFI 36-3209. The administrative discharge board will be comprised of not less than three members appointed in writing by the appropriate convening authority.

3.1.2. The convening authority for administrative discharge boards when the recommended discharge is an Under Other than Honorable Condition (UOTHC) will be the Adjutant General, California National Guard. For recommended discharges of General (Under Honorable Conditions) or Honorable, the convening authority shall be no less than a Wing or Group Commander, in the grade of colonel (O-6) or equivalent.

3.1.3. Individuals will receive written notification of their rights to legal counsel and a board hearing (see sample formats, attachments 1 and 2). If mailed, this letter must be sent certified mail with a return receipt requested.

3.1.4. Individuals will acknowledge receipt of the notification of rights letter within 24 hours after receipt (see attachment 3).

3.1.5. Individuals will have 15 days from the date of receipt of notification letter to consult with a military defense counsel and respond to the unit commander with acceptance of assistance or waiver of assistance (see attachment 4).

3.1.6. If assistance is accepted, the individual must be accommodated with legal support and/or provided with a time and date of board hearing, if one is requested.

3.1.7. If the individual meets the criteria and requests an administrative discharge board, the procedures outlined in AFI 36-3209, para 4.10. (for officers), and para 4.8. (for enlisted) will be followed. The individual may waive a hearing before an administrative discharge board either affirmatively, conditionally, or by failure to respond to written notification within the time limit provided.

3.1.8. Following the Board's determination, or waiver of a board hearing, as the case may be, the unit commander will forward the completed package through channels to HQ CA ANG/DP for review, and further action, as required.

**4.1. Rehabilitation.** The California Air National Guard does not have the facilities nor the capability to offer rehabilitation to drug offenders. AFI 36-3209, para 2-36, which addresses referral to civilian rehabilitation programs at the individual's expense does not apply and is not an option in the ANG.

**5.1. Final Discharge.** Discharge action resulting from positive urinalysis testing will be initiated at unit level and the completed packages will be forwarded to HQ CA ANG/DP for appropriate discharge orders, or forwarding to the Secretary of the Air Force for review, as appropriate.

ROBERT W. BARROW  
Major General, CA ANG  
Commander

Attachments

1. Format for Notification of Discharge Processing - Board Hearing (for enlisted personnel)
2. Format for Notification of Discharge Processing - Board Hearing (for officers)
3. Format for Individual's Acknowledgment of Letter of Notification
4. Format for Individual's Request for Board Hearing or Unconditional Waiver
5. Format for Individual's Statement of Conditional Waiver
6. Format of Recommendation for Discharge (Board Hearing)

FORMAT FOR LETTER OF NOTIFICATION OF DISCHARGE PROCESSING  
BOARD HEARING (FOR ENLISTED PERSONNEL)

(Appropriate Letterhead)

(Date)

MEMORANDUM FOR (Grade, Full Name, SSAN, of Member)  
(Unit)

FROM: Unit/CC

SUBJECT: Letter of Notification - Board Hearing

1. I am recommending your discharge from the California Air National Guard and as a Reserve of the Air Force for Misconduct/Drug Abuse according to AFI 36-3209, para 3.21.3.2. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.
2. (Use this statement for Random Inspection, Probable Cause, or Medical Testing). My reasons for this are based on the laboratory positive results of a urinalysis test on (date).

OR

(For Commander-Directed Testing). My reasons for this are based on the laboratory positive results of a commander-directed urinalysis test on (date).

3. (For Random Inspection, Probable Cause, or Medical Testing). I am recommending that you receive a discharge characterized as Under Other than Honorable Conditions. The Wing (Group) Commander or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Armed Forces of the United States.

OR

(For Commander Directed Testing). This action will result in your separation under Honorable Conditions. I am recommending that you receive an Honorable Discharge. The Wing (Group) Commander or a higher authority will make the final decision in this matter. If you are discharged you will be ineligible for reenlistment in the Armed Forces of the United States.

4. You have the right to:
  - a. Consult legal counsel.
  - b. Present your case to an administrative discharge board.
  - c. Be represented by legal counsel at a board hearing.
  - d. Submit a statement in your own behalf in addition to, or in lieu of, the board hearing. Requests for, or waiver of board hearings, do not affect the right to submit such statements or documents at any time.
  - e. Waive the above rights. You may consult legal counsel before making a decision to waive any of your rights.

f. Military legal counsel (grade, name, duty address, and duty phone number), has been obtained to assist you). Instead of the appointed military counsel, you may obtain another if the attorney you request is in the Air National Guard and is reasonably available. In addition to military legal counsel, you have the right to employ civilian counsel retained at your own expense. The Air National Guard does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. (Include information about special processing requirements if the individual is eligible to apply for retirement).
8. Any personal information you furnish is covered by the Privacy Act Statement, as explained in AFI 36-3209, Attachment 14. A copy of AFI 36-3209 is available for your use at (State Where). When the case is completed, return the copy of AFI 36-3209.
9. Execute the attached acknowledgment and return it to me within 24 hours after receipt of this letter.

SIGNATURE ELEMENT OF COMMANDER

Attachments

1. Supporting Documents for Reasons for Discharge
2. Derogatory Information Documents not listed in Letter of Notification
3. Individual's Acknowledgment Letter
4. DD Form 2624, Specimen Custody Document--Drug Testing

FORMAT FOR LETTER OF NOTIFICATION OF DISCHARGE PROCEEDINGS  
BOARD HEARING - FOR OFFICERS

(Date)

MEMORANDUM FOR (Grade, Name, SSAN of Member)  
(Unit)

FROM: (Unit/CC)

SUBJECT: Letter of Notification - Board Hearing

1. I am recommending your discharge from the California Air National Guard and as a Reserve of the Air Force for Misconduct/Drug Abuse on accordance with AFI 36-3209, para 1-16, and para 2.30.3. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. (Use this statement for Random Inspection, Probable Cause, or Medical Testing). My reasons for this action are based on laboratory positive results of a urinalysis test on (date).

OR

(For Commander-Directed Testing). My reasons for this are based on the laboratory positive results of a commander-directed urinalysis test on (date).

3. (For Random Inspection, Probable Cause, or Medical Testing). I am recommending that you receive a discharge characterized as Under Other than Honorable Conditions (UOTHC). The State Adjutant General will make the final decision in this matter. If you are discharged, you will be ineligible for re-appointment in the Armed Forces of the United States.

OR

(For Commander-Directed Testing). I am recommending that you receive an honorable discharge. The State Adjutant General will make the final decision in this matter.

4. You have the right to:

- a. Consult legal counsel.
- b. Submit statements or documents, at any time, to be considered in disposition of the case.
- c. Waive the above rights, as well as the right to an administrative board hearing, after consulting legal counsel. You must respond within 15 days (30 if member is in confinement) after receipt of this letter showing a decision on each of these rights.

5. You must return within twenty-four hours after receipt, the attached acknowledgment of receipt of this letter of notification and attachments.

6. Failure to acknowledge receipt or to respond regarding selection of rights within 15 days(30, if member in confinement) constitutes a waiver of your right to be personally present and to be represented by counsel at an administrative discharge board hearing. In this case, the administrative discharge board will proceed without you.

7. If you choose to exercise the right of an administrative discharge board, you must return a statement which indicates the following:

- a. Whether you desire to make a personal appearance before the board.
- b. Whether you desire representation by the military legal counsel made available to you.
- c. Whether you want to be represented by other legal military counsel, and if so, give that individual's name, address, and phone number.
- d. Whether you wish to be represented by other legal military counsel at your own expense, and if so, give that individual's name, address, and telephone number.
- e. Names, addresses, and telephone numbers, if known of any witnesses that you want to appear before the board, and provide a summary of the expected testimony of these witnesses, and an explanation why their written or recorded testimony could not be presented to the board hearing for a fair determination of the case, in lieu of a personal appearance.
- f. A statement that you understand that failure to appear at the scheduled administrative hearing, after indicating you will make a personal appearance, will result in the case being heard by the administrative board in your absence.
- g. A statement that you or your counsel need additional time to prepare for or to attend the board hearing, you may submit a written request for a delay stating the reasons and how much time is needed.

SIGNATURE ELEMENT OF COMMANDER

Attachment

1. Supporting Documents for Reasons of Discharge
2. Derogatory Information Documents not Listed in Letter of Notification
3. Individual's Acknowledgment Letter
4. DD Form 2624, Specimen Custody Document - Drug Testing

FORMAT FOR MEMBER'S ACKNOWLEDGMENT OF LETTER OF NOTIFICATION  
BOARD HEARING

MEMORANDUM FOR (Unit/CC)

FROM: (Enter Member - Grade, Name, SSAN)  
(Enter Member's Address)

SUBJECT: Acknowledgment of Receipt of Letter of Notification

1. I received the letter of notification dated (enter date of letter), at (time) on (date), informing me of discharge processing in accordance with AFI 36-3209, para 1.16.

2. I understand that I have the right to:

- a. Consult counsel.
- b. Submit statements in my own behalf.
- c. Waive either of the above rights.

3. I acknowledge that:

- a. I have received copies of the documents to be forwarded to the separation authority in support of the recommendation of my discharge.
- b. I have been offered the opportunity to consult military legal counsel.

4. I understand that:

- a. (For random inspection, probably cause or medical testing). This action may result in my discharge from the Air Force Under Other Than Honorable Conditions).

OR

(Commander-directed testing). This action may result in my discharge from the Air Force under honorable conditions.

- b. That my failure to consult legal counsel or to submit statements will constitute a waiver of my right to do so.

Member's Name, Grade, CA ANG  
Member's SSAN

FORMAT FOR INDIVIDUAL'S STATEMENT OF REQUEST FOR BOARD  
HEARING AND/OR LEGAL COUNSEL, OR UNCONDITIONAL WAIVER

(Use Appropriate Letterhead)

MEMORANDUM FOR (Commander, Unit Recommending Discharge)

FROM: (Grade, Name, SSAN of Member)  
(Member's Address)

SUBJECT: Discharge under AFI 36-3209

1. I have received the notification that you are recommending me for discharge for Misconduct/Drug Abuse in accordance with AFI 36-3209, para 1.16, and the specific basis of the proposed discharge. I know that I am entitled to request or waive the following rights:

- a. To present my case to an administrative discharge board.
  - b. To be represented by military counsel.
  - c. To submit statements in my own behalf to be considered by the Administrative Discharge Board and/or separation authority.
2. Military counsel has been made available to me and I have been notified of my right to employ civilian counsel at my own expense, if I desire to do so.
3. I (waive)(do not waive) my right to a hearing before an administrative discharge board. I understand that if the separation authority approves the recommendation for my discharge, this official will also determine the type of discharge to be issued to me. I (do) (do not) waive my right to military counsel. I (am) (am not) submitting statement in my own behalf.
4. (For Random Inspection, Probable Cause, or Medical Testing ONLY). I understand that, regardless of your recommendation, I may be discharged Under Other Than Honorable Conditions. I know that as a result of such a discharge, I may be deprived of veteran's benefits. I am aware that I may encounter situations in civilian life where the type of service rendered in any such branch of the Armed Forces or the type of discharge received may have a bearing.
5. I have signed this statement voluntarily and keep a copy of it.

(Member's Name, Grade, CA ANG)  
(SSAN)

(Note: If the member indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights and the failure to sign will be noted).



FORMAT FOR INDIVIDUAL'S STATEMENT OF CONDITIONAL WAIVER

(Use Appropriate Letterhead)

MEMORANDUM FOR (Commander, Unit Recommending Discharge)

FROM: (Member's Name, Grade, SSAN)  
(Member's Address)

SUBJECT: Discharge Under AFI 36-3209

1. I have been notified that you are recommending me for discharge under AFI 36-3209, para 1-16, for Misconduct/Drug Abuse. I know that I am entitled to request, or waive in writing, the following rights:
  - a. To present my case before an administrative discharge board.
  - b. To submit statements in my own behalf.
  - c. To be represented by military legal counsel.
2. Military legal counsel has been made available to me and I have been notified of my right to employ civilian legal counsel at my own expense, if I so desire.
3. I hereby offer a conditional waiver of the rights associated with an administrative discharge board hearing. This waiver is contingent on my receipt of no less than a characterization of General (Under Honorable Conditions), if the recommendation for discharge is approved. I understand that if you or a higher discharge authority rejects this waiver, the processing of my case will continue according to AFI 36-3209.
4. I have voluntarily signed this statement and retained a copy of it.

(Member's Name, Grade, CA ANG)  
(Member's SSAN)

FORMAT FOR LETTER OF RECOMMENDATION FOR DISCHARGE  
(BOARD HEARING)

MEMORANDUM FOR (Group/Wing Commander)

FROM: (Squadron/Flight Commander)

SUBJECT: Recommendation for Discharge (Member's Name, Grade, SSAN)

1. (For Random Inspection, Probable Cause, or Medical Testing). I recommend that (Rank, Name, SSAN of member) be discharged from the Air National Guard of the United States and as a Reserve of the Air Force for Misconduct/Drug Abuse. The authority for my recommendation is AFI 36-3209, para 1.16. I recommend a discharge characterized as Under Other than Honorable Conditions. The specific reason for the proposed discharge and basis for the recommendation are contained in my letter notifying (member's grade, last name) of this action. A copy of that letter is attached.

OR

(For Commander-Directed Testing). I recommend that (member's grade, name, SSAN) be discharged from the Air National Guard of the United States and as a Reserve of the Air Force for Misconduct/Drug Abuse. The authority for my recommendation is AFI 36-3209, para 1-16. I recommend an Honorable Discharge. The specific reason for the proposed discharge and condition on which the recommendation is based are contained in my letter notifying (member's grade, last name) of this action. A copy of that letter is attached.

2. Information from the military record follows:

- a. Date and term of enlistment and date this period of continuous active reserve duty started.
- b. Date of birth.
- c. Test scores.
- d. Formal training.
- e. Date assigned to unit.
- f. Date of Promotions.
- g. Demotions, if any, reasons and dates thereof. If there have been none, explain why the circumstances that led to the discharge action did not warrant consideration of demotion.
- h. Time lost. Give reason and date.
- i. Record of disciplinary action.
- j. Favorable communications, citations, or awards.
- k. Derogatory data.
- l. Medical or other data meriting consideration;

3. I did not take rehabilitative actions, counsel, or take other corrective actions prior to recommending this member for discharge.
4. I do/do not recommend probation and rehabilitation since the Air National Guard does not have the facilities nor the capability to establish such a program.

SIGNATURE ELEMENT OF UNIT COMMANDER

Attachment

1. Dated Letter of Notification
2. Member's Acknowledgment, Dated
3. Member's Statement Concerning Board Hearing
4. Laboratory Results of Urinalysis Test
5. DD Form 2624, Specimen Custody Document - Drug Testing